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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,379	02/19/2004	Roger Warren	486.0047USU	3589

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/782,379	Applicant(s) WARREN ET AL.	
	Examiner Gloria Hale	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-15-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: Consistent terminology should be used throughout the specification. For example on page 5, line 19 reference number 30 is described as a "support layer". It has been previously described as an "outer support layer". Since it is claimed as an outer layer it should be described in the specification as an "outer layer" for consistency and to provide the proper antecedent basis for the claimed terminology.

Appropriate correction is required.

The use of the trademark LYCRA has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology, spandex.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks

Claim Objections

Claims 1-18 are objected to because of the following informalities: In claim 5, line 1 there is no support in the specification for the term "firm" and therefore it is not clear as to what the term "firm resilient characteristics" encompasses. This is also found in claim 17. In claim 6 there is no support in the specification for the term "support material". Claim 7 does not further limit the claims in that Claim 1 already

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recites the layer as being for fusing and adhering. In claim 1, line 3 and claim 8, line 1 the specification describes the "outer layer" as a "support layer" as described on page 3 and not as an outer layer. In claims 9, 11 and 12 there is no support in the specification for the term seamless transparent layer" or "seamless support layer". Therefore it is not clear as to what is being claimed. In claim 14 there is no support in the specification for the "seamless connection". Also it is not clear as to whether the transparent layer has been cut to match the shape of the previously cut support layer. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "said support material" in claim 5, line 1.

However, the claims, as best understood, have been examined on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 2 and 6-18 rejected under 35 U.S.C. 102(b) as being anticipated by Gluckin (US 5,154,659).

In regard to claim 1 Gluckin discloses a brassiere 60 with an inner transparent layer, lace 92, with an inner and outer surface; an outer support layer 78 with an inner and outer surface and a third intermediate fusing layer 80. The layers of Gluckin are seamless as broadly claimed. (See Gluckin, col. 3, line 39 – col. 4, line 4 and figures 5-11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659).

Gluckin discloses the brassiere with the inner layer as being transparent and the outer layer as being cotton. However, Gluckin does not specifically disclose the outer layer as being transparent. It is well known to use lace in brassiere construction in order to achieve a desired aesthetic effect and wherein such a selection is a mere selection of a material as a matter of design choice. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to use a transparent or lace cotton material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
Art Unit 3765
